

22. (New) A thermal and moisture barrier for use with a specialized heating and humidifying apparatus having a bed used in the care of a neonatal infant, the barrier comprising:

a substantially flexible cover which defines an enclosure when placed over the bed to create a substantially neutral thermal environment therein; and

at least one opening providing access to said enclosure having a self-acting closure means.

23. (New) The method of Claim 22, wherein said self-acting closure means comprises a manually penetrable diaphragm which opens as an object is urged therethrough and closes as said object is removed therethrough.--

REMARKS

Claims 1-17 and 21-23 are pending in the application. Claims 18-20 have been canceled. Any rejections thus made to Claims 18-20 are now moot. Claims 21-23 have been added, with no new matter being added thereby. Claims 1-17 have been previously examined. Applicants respectfully request reexamination and reconsideration of the pending claims.

Rejections under 35 U.S.C. § 112, second paragraph

The Examiner has rejected Claim 6 as being indefinite. Applicants have amended Claim 6 such that the rejection has been made moot. Accordingly, the rejection is overcome and Claim 6 is allowable.

Rejections under 35 U.S.C. § 102 and § 103

Claims 1, 8-10, 15, and 18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Pronzinski (U.S. Patent No. 4,712,263). Claims 2-5, 11-13, 17, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pronzinski in view of Korla (U.S. Patent No. 5,342,121). Claims 6, 14, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable

A

over Pronzinski in view of Barsky et al. (U.S. Patent No. 5,119,467). Claims 7 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pronzinski. Applicants respectfully overcome the rejections as follows.

Regarding Claim 1, a thermal and moisture barrier is set forth having a substantially flexible cover, which defines an enclosure. Claim 1 also sets forth at least one opening being configured to have a self-acting closure. As described in Applicants' specification, the self acting closure is designed to open and close as a clinician's hand or an instrument is urged therethrough (Page 7, lines 20-23). Thus, the neutral thermal environment can be substantially preserved while medical procedures are conducted. Applicants' could find no teaching or suggestion in Pronzinski of a barrier having a self-acting closure. In contrast, Pronzinski seems to only describe creating an opening in the thermal blanket by cutting or puncturing the blanket. Intuitively, the act of cutting or puncturing the device teaches way from a self-acting closure. Accordingly, Applicants' submit that Claim 1 is allowable.

Referring to Claim 10, the claim sets forth a flap portion which overhangs the side panels of the heating apparatus to create a substantially enclosed environment (Page 6, lines 27-28, page 7, lines 8-9, Figs. 1 and 2). Advantageously, by hanging the flap portion of the cover over the side panels, the weight of the cover forces the barrier against the side walls to create the enclosed environment.

Pronzinski fails to teach or suggest a cover including a flap portion, which overhangs side walls of a heating and humidifying apparatus. Instead, Pronzinski teaches using a blanket with a flat edge portion, where the flat edge portion is formed around the perimeter of the blanket to support the blanket and provide a seal with the bedding portion (Col. 2, lines 15-18 and Fig. 1). Further, Pronzinski teaches away from overhanging the flap portions of the cover over the side walls by teaching that the neonatal blanket in Pronzinski is designed to be self-supporting. Accordingly, Claim 10 is allowable.

Regarding claim 17, a barrier is set forth having a plurality of openings, each including a closing assembly. The closing assembly includes "a resiliently flexible sheet extending across the opening and having slits extending radially outward having a common junction point located substantially centrally of the flexible opening which provide self-acting closure" to preserve the neutral thermal and humidified environment. The self-acting closure substantially maintains a seal around a clinician's hand, or else an instrument, that is urged into the opening. As discussed above, Pronzinski does not teach or suggest a self-acting

A

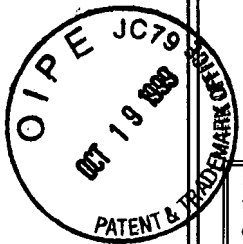
closing assembly. Further, Korla does not correct the deficiency of Pronzinski, since Korla describes an iris-type port 26 or 98, components of which must be rotated to be opened and/or closed when access to a unit is necessary. Applicants submit that the iris-type port 26, 98 of Korla does not provide a self-acting closure function, since it requires the rotation of inner and outer rings to open and close the iris (Col. 1, lines 58-59 and Col. 5, lines 43-49). Moreover, Applicants could find no teaching or suggestion in Barsky et al. that, when viewed in combination with Pronzinski, would arrive at Applicants' invention. Thus, Claim 17 is allowable.

Claims 2-9 depend from Claim 1 and are allowable for at least the same reasons as Claim 1 as well as for the novel features which they add.

Claims 11-16 depend from Claim 10 and are allowable for at least the same reasons as Claim 10 as well as for the novel features which they add.

CONCLUSION

For the foregoing reasons, Applicants believe pending Claims 1-20 are allowable and a notice of allowance is respectfully requested. If the Examiner has any questions regarding the application, the Examiner is invited to call the undersigned Attorney at (949) 718-6780.



I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: ASSISTANT COMMISSIONER FOR PATENTS, Washington, D.C. 20231,

on OCT 15, 1999.

Alan H. MacPherson OCT 15, 1999
Attorney for Applicants Date of Signature

Respectfully submitted,

Alan H. MacPherson
Attorney for Applicants
Reg. No. 24,423

552172 v1

LAW OFFICES OF
SKJERVEN, MORRILL,
MacPHERSON, FRANKLIN
& FRIEL LLP

25 METRO DRIVE
SUITE 700
SAN JOSE, CA 95110
(408) 453-9200
FAX (408) 453-7979

552172 v1

A